

IN THE SUPREME COURT OF THE STATE OF NEVADA

OMAR X. JEFFERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46873

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. ...*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of felony possession of a controlled substance. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Initially, the district court suspended the proceedings against appellant Omar X. Jefferson and placed him on probation.¹ As a condition of his probation, Jefferson was required to complete a drug treatment program.² However, due to his misbehavior, Jefferson's participation in the program was terminated. Thereafter, the district court revoked Jefferson's probation, adjudicated him guilty of the possession charge, and sentenced him to serve a prison term of 12 to 32 months.

Jefferson contends that the district court abused its discretion by ordering the execution of his sentence. He asserts that his conviction for a category E felony mandates a suspended sentence and probation,³ and he argues that his sentence amounts to cruel and unusual punishment. We disagree.

¹See NRS 453.3363(1).

²Id.; NRS 453.580(1).

³See NRS 176A.100(1)(b).

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁵ Moreover, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."⁶

Jefferson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. We note that the district court may order the execution of a sentence it has imposed for a category E felony when, as here, the defendant was "assigned to a program of treatment and rehabilitation pursuant to NRS 453.580 and failed to successfully complete that program."⁷ And we conclude that Jefferson's sentence falls within the parameters provided by the relevant statutes.⁸

⁴See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁶Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

⁷NRS 176A.100(1)(b)(3).

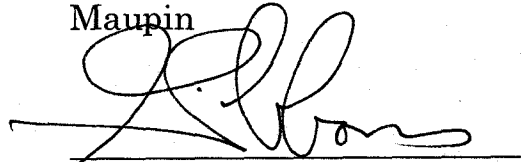
⁸See NRS 453.336(2)(a) (a first offense of possession of a controlled substance listed in schedules I, II, III, or IV is a category E felony); NRS
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Having considered Jefferson's contentions and concluded that they are without merit, we

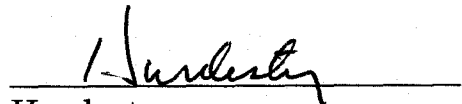
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

... continued

193.130(2)(e) (a category E felony is punishable by a prison term of one to four years).